IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

WP(C).No. 32954 of 2006(W)

PETITIONER:

SAJEEV. A., PROPRIETOR,
M/S. HARISREE ENTERPRISES, XIII/209C,
AMRUTHAM, MAMPILLY LANE,
EROOR SOUTH P.O., TRIPUNITHURA.

BY ADV. SRI.T.M.SREEDHARAN

RESPONDENTS:
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1. THE COMMRCIAL TAX OFFICER-1,
KVAT, 1ST CIRCLE, TRIPUNITHURA.

2. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER SRI.JULIAN XAVIER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN, J.

W.P.(C) NO. 32954 OF 2006

Dated this the 15th day of December, 2006

J U D G M E N T

The challenge made in this writ petition is against Exhibit P7 proceedings of the Deputy Commissioner (Appeals), Commercial Taxes, Ernakulam disposing of an interim application filed along with the appeal seeking stay of the order impugned in the appeal. The order reads thus:

> "For the reasons stated above, the petition filed by the appellant is dismissed as the appellant has not remitted the tax assessed to entertain the appeal as per section 55, of the KVAT Act and the rate of tax adopted by the assessing authority is on the basis of the Circular issued by the Commissioner of Commercial Taxes, as per section 94 of the KVAT Act.
>
> As per second proviso to Section 55, no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of
>
> a) the entire tax assessed, where the appeal is against an assessment completed under sub-section (3) of section 22."

As per Section 22(7) of the Kerala Value Added Tax, it opens with a non obstante clause. For the purpose of easy reference, the said provision is extracted hereunder.

> "Notwithstanding anything contained in any other provision of this act, no appeal shall lie against the assessment completed under Sub Section (3) of this section unless the dealer has paid

the entire tax assessed.”

2. From the above provision, it can be seen that Sub Section 7 overrides Section 55 and therefore the appellate authority cannot grant a stay if the assessment is made under Section 22 because of the overriding effect of Section 22(7). The appellate authority in such circumstances having dismissed the interim application for stay, I do not find any justifiable ground to interfere with that order.

The writ petition is accordingly dismissed.

Issue emergent copy.

P.R.RAMAN, JUDGE

Rp